THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 22830 OF 2006

Between :

Takasala Veera Venkata Siva Sankara Prasad,
R/o Yenkipadu, Vijayawada Rural, Krishna District
And others

… Petitioners

And :

The Commissioner of Endowments, Government
Of AP, Hyderabad, and others

… Respondents

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ORAL ORDER :

The petitioners claim to be the lessees of an extent of Ac.4.10 cts, of agricultural land in D.No. 69/3, 70/1, 70/3, 70/4, 70/6, 70/8 situate at Kolanukonda village, Tadepali Mandal, Guntur District, having been granted leases by the respondents 3 to 5. According to the petitioners, respondents 3 to 5 are Archakas of Sri Pattabhirama Swamy Temple and were the owners of the lands since the lands were granted in favour of Archakas by Sri Raja Vasi Reddy Venkatadri Naidu for rendering Archkathvam service. The petitioners claim that earlier their father and thereafter they are in continuous possession and enjoyment of the lands in question as lessees of the Archakas. They claim to have entered into a lease deed with the respondents 3 to

5 in the year 2004 for a period of three years.

The petitioners admit that some among the respondents 3 to 5 i.e., respondents 3 and 4, had filed W.P.No. 14412/04 challenging the public auction notification dated 27.7.2004 issued by the Devasthanam proposing conduct of a public auction for grant of leasehold rights to the lands in question. These respondents, as petitioners in W.P. No. 14412/04 also challenged the letter of the Commissioner of Endowments dated 4.8.2004 calling upon the petitioners therein to hand over the lands. By the judgment dated 17.2.2006 the writ petition was disposed of. A learned single Judge of this court held, on an analysis of material produced by the petitioners therein, that a Ryotwari Patta was granted only in respect of ac. 2.57 cts on 6.5.1980 and that in respect of the remaining lands of the total extent of Ac.8.32 cts, in the aforementioned Sy. Nos. the petitioners therein had no right and the remaining lands belong to the Devasthanam. Consequent on the above finding the said writ petition was disposed of enabling the Devasthanam to grant leasehold rights by issuing a fresh notification.

Consequent on the disposal of the Writ Petition No.14412/04 as above, the 2nd respondent issued a public notification dated 15.10.2006 proposing conduct of a public auction for grant of leasehold rights for land in an extent of Ac. 4.10 cts, in the said Sy. Nos. As is apparent from the pleadings in this writ petition, the petitioners themselves, though grudgingly, accepted the position that the lands belong to Devasthanam in view of the judgment of this court in W.P.No. 14412/04. The petitioners appear to have been disabused of their initial misconception that the lands belong to the Archakas. What they now assert while challenging the auction notification dated 15.10.2006 is that since they are in possession of these lands, though as encroachers as it now transpires, they could not be dispossessed

except by following the due procedure as spelt out in Sec. 83 of the AP Charitable and Hindu Religious Institutions & Endowments Act, 1987 ('the Act').

These two contentions are disjunctive. The conduct of the public auction for grant of leasehold rights of lands of the Devasthanam by the impugned auction notification dated 15.10.2006 is a conduct of the 2nd respondent that does not suffer from any infirmity whatsoever. The petitioners cannot claim a higher status in respect of the lands in question than what their lessors – respondents 3 to 5 have. The claim of the respondents 3 to 5 as to entitlement to lands in question independent of the entitlement of the Devasthanam, was clearly and categorically rejected by this court in W.P.No. 14412/04. Therefore the petitioners are and have always been encroachers of these Devasthanam lands. This appears to be the undisputable inference to be drawn from the chronology of facts adverted to above.

In the circumstances above the 2nd respondent Devasthanam is entitled as of law and *ex debito justitia* to notify public auction of those Devasthanam lands, in accordance with the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Lease of Agricultural Lands Rules 2003 (for short "the Rules") and this is what the 2nd respondent proceeded to do by issuing the impugned notification. It is a well settled principle that no Mandamus could be issued to interdict the lawful exercise of available power. The petitioners' challenge to the notification dated 15.10.2006 must therefore comprehensively fail

Regarding the petitioners' apprehension that they would be dispossessed on account of the auction and solely therefore, it must be observed that there is no basis for this apprehension. The conduct of an auction will only entitle the highest bidder for consideration of his

bid for approval by the competent authority in accordance with the provisions of the Rules. The mere fact of conduct of an auction or acceptance of the highest bid by the competent authority would not *ipso facto* translate to an entitlement of the official respondents to put the highest bidder into possession without lawfully dispossessing the persons in occupation, though unlawfully, of the lands of the Devasthanam. Even encroachers will have to be evicted in accordance with the provisions of Sec.83 and 84 of the Act. Therefore, the official respondents are always at liberty to pursue appropriate substantive and procedural remedies available under the Act or otherwise, to seek the eviction of the petitioners from the extents of land of the 2nd respondent Devasthanam they are in occupation of and the respondents are also entitled to proceed expeditiously for this purpose. The petitioners shall, not however be dispossessed from the lands they are in illegal occupation of as encroachers, except by following the due process ordained by the provisions of the Act.

The writ petition is disposed off as above reiterating the position that the auction notification dated 15.10.2006 issued by the 2nd respondent is impeccable and suffers from no infirmity. No order as to costs.

Dt: 06.11.2006 ----------

CC by day-after-tomorrow Justice G. Raghuram

(B/O)

Pvsn/Tsnr